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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
		STOSEL	13-611(2365)

31M1/0429  
TIER & HEINKE CO  
3106

EXAMINER  
AVERY, B

ART UNIT  
3106

PAPER NUMBER

DATE MAILED: 04/29/97

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/698,853

Applicant(s)

Palenchar, Thomas

Examiner

Bridget Avery

Group Art Unit

3106



☒ Responsive to communication(s) filed on Mar 26, 1997

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 ~~month(s)~~, or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-24 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-24 are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

### ***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6 and 14-22 are drawn to an engine air intake system, classified in class 180, subclass 68.3.
- II. Claims 7-13, drawn to a grating for use in an opening, classified in class 55, subclass 385.3.
- III. Claims 23-24, drawn to a method of separating water from air being supplied to an over the highway truck or tractor vehicle engine, classified in class 180, subclass 69.25.

1. Inventions (I and II) and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process as claimed can be used in a materially different product such as in an air cleaning device like a humidifier.

In addition, if the apparatus is elected, the following restriction applies.

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2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed including integrally molded clips and a gasket. The subcombination has separate utility such as being used for an air cleaner to be used inside of a house.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes as indicated is proper.

4. A telephone call was made to Thomas Fisher on April 28, 1997 to request an oral election to the above restriction requirement, but did not result in an election being made.

5. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number (703) 308-2086.

Avery

*Bridget Avery*  
BRIDGET AVERY  
PATENT EXAMINER  
GROUP 3100

4/28/97

April 28, 1997

*Brian L. Johnson*  
BRIAN L. JOHNSON  
SUPERVISORY PATENT EXAMINER  
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4/28/97